

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Case No. 0:08-CR-0026 (PJS/JSM)

Plaintiff,

v.

ORDER

TIMOTHY ALLEN CAIN,

Defendant.

Erika R. Mozangue, UNITED STATES ATTORNEY'S OFFICE, for plaintiff.

Larry B. Leventhal, LARRY LEVENTHAL & ASSOCIATES, for defendant.

This matter is before the Court on defendant Timothy Allen Cain's objection to the May 21, 2008 Report and Recommendation ("R&R") of Magistrate Judge Janie S. Mayeron [Docket No. 24]. Judge Mayeron recommends granting in part and denying in part Cain's motion to suppress evidence.

The Court has reviewed de novo those portions of the R&R to which Cain objected, as required by 28 U.S.C. § 636(b)(1) and Fed. R. Crim. P. 59(b)(3), and agrees with Judge Mayeron's recommendation. The Court also agrees almost entirely with Judge Mayeron's careful and thorough R&R and adopts it in all respects but one.

Cain moves to suppress evidence found by law-enforcement officers who, before getting a search warrant, looked at files stored on Cain's laptop computer and on optical disks (CDs or DVDs) they seized from his apartment. Cain also moves to suppress files obtained by police

pursuant to a search warrant, and statements Cain made to an FBI interviewer, because (says Cain) the earlier warrantless search of his files tainted the later-obtained evidence.

Judge Mayeron found that the warrantless searches of Cain's files did not violate the Fourth Amendment because the searches were supported by reasonable suspicion, which was sufficient given that Cain was subject to a search condition as part of his supervised release. R&R at 11-13 & n.2. The Court agrees.

Judge Mayeron also concluded, however, that the challenged searches were lawful because the governing case law "permit[s] warrantless searches of probationers' and parolees' residences and persons, with or without reasonable suspicion, where such searches are imposed or agreed upon by the probationer or parolee as a condition of their release." *Id.* at 11. In light of Judge Mayeron's finding that reasonable suspicion supported the challenged searches — a finding with which the Court agrees — it is unnecessary to decide when or whether suspicionless searches are permissible under the Fourth Amendment. The Court therefore expresses no opinion on this question, and declines to adopt the R&R to the extent that it takes a position on the lawfulness of subjecting probationers and parolees to suspicionless searches.

ORDER

Based on the foregoing and on all of the files, records, and proceedings herein, the Court OVERRULES Cain's objection and ADOPTS IN PART Judge Mayeron's Report and Recommendation [Docket No. 24] to the extent that it is consistent with this Order. Accordingly, IT IS HEREBY ORDERED THAT:

1. Cain's motion to suppress is GRANTED with respect to statements made on February 7, 2007 in response to Agent Brumm's questions after Agent Brumm touched Cain's computer and before Cain was formally arrested.
2. Cain's motion to suppress is DENIED in all other respects.

Dated: June 18, 2008

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge